



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342 M

OR2003-2628

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178746.

The Texas Department of Criminal Justice (the "department") received a request for records pertaining to a named death row inmate's three prior incarcerations. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 relates to inmates of the department. This exception provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8).

The submitted information concerns an inmate who is confined in a facility operated by the department and has been sentenced to death. You explain that the only information responsive to the present request is about the inmate "while he was incarcerated in TDCJ for non-capital crimes." You also state that documents at issue "are not part of the death row file and are not filed therein." Thus, the submitted information is information about a department inmate, but it is not "information about an inmate sentenced to death." Therefore, because the submitted information was not created at a time when the inmate was sentenced to death and is not maintained in the inmate's death row file, we find that section 552.134(a) of the Government Code is applicable to the submitted information.¹

However, we note that section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, or an incident involving the use of force is subject to required disclosure. The submitted documents include information pertaining to the destruction of property and escape, alleged crimes involving the inmate. *See* Penal Code §§ 28.03 (criminal mischief), 38.06 (escape). Therefore, pursuant to section 552.029(8), basic information related to these alleged crimes must be released.² Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The

¹This ruling does not reach the issue of whether information obtained during an inmate's incarceration on death row or maintained in files created during an inmate's incarceration on death row would be excepted from required public disclosure under the Public Information Act.

²We note that the information that is subject to release under section 552.029 is not excepted by section 552.103. *Cf.* Open Records Decision No. 597 (1991) (section 552.103 does not protect basic information).

remaining submitted information must be withheld under section 552.134. While we note that the requestor is an attorney who is representing the inmate, an attorney representing an inmate has no greater right of access to information about the inmate than the general public. *See* Gov't Code § 552.028(a)(2). Because of our conclusion concerning section 552.134, we need not consider your section 552.103 claim.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 178746

Enc: Submitted documents

c: Ms. Naomi Terr
Texas Defender Service
412 Main Street, Suite 1150
Houston, Texas 77002
(w/o enclosures)